



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

June 25, 2010

Colonel Alfred A. Pantano, Jr.
District Engineer
Department of the Army
Jacksonville District Corps of Engineers
Attn: Susan Blass
Fort Myers Regulatory Office
1520 Royal Palm Square, Suite 310
Fort Myers, Florida 33919

Subject: Hacienda Lakes of Naples LLC; 2003-11158 (IP-SMB)

Dear Colonel Pantano:

This letter is in response to permit application number 2003-11158 (IP-SMB) submitted by Hacienda Lakes of Naples LLC. The applicant proposes to place fill material in 341.63 acres and excavate 118.84 acres of freshwater wetlands. In addition, the applicant proposes to impact 14.30 acres of other surface waters (OSW) by fill activities. The total site is 2,262.14 acres in size and contains 1,747.79 acres of wetlands, 496.72 acres of uplands, and 17.63 acres of OSW. The purpose of the project is to construct a residential and commercial development. The on-site wetlands can be characterized as 928.64 acres of cypress/pine/cabbage palm mix, 345.8 acres of melaleuca (*melaleuca quinquenervia*), 185 acres of cypress (*Taxodium spp.*), 137.95 acres of hydric pine flatwoods (*Pinus elliottii*), 54.21 acres of wet pasture, 38.24 acres of wetland forested mix, 19.78 acres of disturbed lands, 13.45 acres of willow (*Salix spp.*), 12.60 acres of wetland shrub, 10.31 acres of marsh habitat, and 1.81 acres of Brazilian pepper (*Schinus terebinthifolius*). The proposed work is located on the southeast corner of State Road 951 and Rattlesnake Hammock Road, in Sections 11, 12, 13, 14, 23, 24, and 25, Township 50 South, Range 26 East, Collier County, Florida.

Proposed wetland impacts will occur within hydric pine flatwoods. The Environmental Protection Agency (EPA), Region 4 considers hydric pine flatwoods systems to be aquatic resources of national importance (ARNI), because they are threatened habitats that provide nesting, resting, and feeding sites for a wide variety of wildlife species. Hydric pine flatwoods of south Florida are unique areas that provide essential forested habitat for wildlife including the wood stork (*Mycteria americana*), red-cockaded woodpecker (*Picoides borealis*), eastern indigo snake (*Drymarchon corais*), gopher tortoise (*Gopherus polyphemus*), bald eagle (*Haliaeetus leucocephalus*), bobcat (*Lynx rufus*), Florida sandhill crane (*Grus canadensis pratensis*), and 900 native plant species including 80 rare and endemic species. Additional benefits include filtering upland runoff, stabilizing sediments, and taking up nutrients which help to improve the quality of nearby waters. Hydric pine flatwoods are rare outside south Florida, but are of critical, regional

importance as one of the dominant forest cover types in south Florida. This geographically limited, subtropical habitat type has seasonal hydrologic variation, which results in a habitat with the highest plant diversity of any in south Florida. Despite the importance of this habitat type, south Florida hydric pine flatwoods are among the least protected lands in Florida, with only nine percent in public ownership. Regionally, the loss of hydric pine flatwoods habitats of south Florida will critically affect the biodiversity and endemic flora and fauna of south Florida (U.S. Fish and Wildlife Service, 1999). For these reasons, EPA considers these hydric pine flatwoods to be ARNI.

Proposed direct and indirect impacts will also occur with cypress wetlands. We consider cypress wetlands to also be ARNI, because they provide nesting, roosting, and feeding sites for a wide variety of wildlife species. Cypress wetlands of south Florida are unique areas that provide essential forested habitat for wildlife including the wood stork (*Mycteria americana*), eastern indigo snake (*Drymarchon corais*), bald eagle (*Haliaeetus leucocephalus*), wood duck (*Aix sponsa*), barred owl (*Strix varia*), and raccoon (*Procyon lotor*). In addition, cypress wetlands filter upland runoff and provide groundwater recharge of the aquifer when the adjacent water table drops during drought periods (FWS, 1999).

EPA, Region 4 has completed its review of this project from information contained in the public notice. This letter summarizes EPA's position on the project, concentrating especially on Section 404(b)(1) Guidelines, which prohibit avoidable or significant adverse impacts to the aquatic environment.

In order to fully review the proposed project, EPA requests that the applicant provide information on alternative site locations that have been reviewed which would have less adverse impacts on the aquatic environment. Section 230.10(a) of the 404(b)(1) Guidelines states that no discharge of dredge and/or fill material (into waters of the United States, including wetlands) shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic environment, provided the alternative does not have other significant adverse environmental consequences. This regulation further states that for non-water dependent projects, practicable alternatives that do not involve special aquatic sites are presumed to be available. Practicable alternatives are those that are "available and capable of being done after taking into consideration cost, existing technology, and logistics in light of the overall project purposes." Therefore, EPA requests that the applicant provide this office with the following information for each site examined:

- a. Presence, quantity and quality of wetlands;
- b. County and/or city zoning;
- c. Each land parcel's availability for purchase, and a determination of whether the proposed cost is reasonable;
- d. The presence or absence of any federally listed plant or animal species and/or historical properties;
- e. The presence or absence of high value uplands; and
- f. Transportation access to the site.

EPA requests that the applicant provide information on measures that have been taken to avoid and minimize on-site wetland impacts. The applicant proposes to impact 460.47 acres of the on-site wetlands. According to the Clean Water Act (CWA) Section 404(b)(1) Guidelines and February 6, 1990, Memorandum of Agreement between the U.S. Army Corps of Engineers (Corps) and EPA in determining mitigation, an applicant must demonstrate avoidance and minimization of wetland impacts before compensatory mitigation can be considered. Specifically, no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem. Practicable alternatives include activities which do not involve the discharge of dredged or fill material into waters of the United States. We believe the applicant can avoid and minimize on-site wetland impacts by eliminating the isolated commercial development located in the central section of the site.

The applicant's proposed mitigation consists of the onsite preservation and enhancement of 1,224.14 acres and the restoration of 63.18 acres of freshwater wetlands. Since avoidance and minimization have not been adequately demonstrated, it is premature for EPA to consider any type of mitigation plan. In the event that avoidance and minimization are demonstrated in the future, EPA requests that the applicant provide the following information in order to demonstrate that the on-site mitigation proposed is appropriate to offset project impacts:

- a. Detailed mitigation and maintenance plan;
- b. The responsible party for the long-term management of the mitigation area;
- c. Assurance for the long-term protection of the mitigation area (such as a perpetual conservation easement);
- d. Detailed performance standards to achieve mitigation success;
- e. Detailed monitoring requirements;
- f. Detailed long-term management plan;
- g. Detailed adaptive management plan;
- h. Documented financial assurance to insure the mitigation site is maintained in perpetuity and;
- i. Detailed description of the net benefit the proposed mitigation will provide to the environment.

EPA requests that the Corps have the applicant provide this office with the Uniform Mitigation Assessment Method (UMAM) scores for the proposed impact and mitigation sites. The UMAM scores should also include an explanation of how scores were determined based on existing and post project conditions.

EPA requests that the applicant demonstrate that post-project nutrient loads will not exceed pre-project loads. We have concerns in reference to the potential water quality degradation associated with the project. The State water quality certification under Section 401 of the CWA has not been issued for the project. As described in the record of decision for the, *Final Environmental Impact Statement On Improving the Regulatory Process in Southwest*

Florida, Lee and Collier Counties, Florida (FEIS), the Big Cypress Swamp Watershed has experienced overall degradation since the 1960's. The water quality of the Big Cypress Swamp Watershed has declined because of wastewater inputs, storm water run-off, and increased nutrients from tributaries. In addition, this project appears in the FEIS, Appendix H, Sections 6, 7, 8, 24, and 25 permit review criteria established by the Corps. Specifically, each Section is described below:

a. Section 6, Permit Review: The applicant needs to provide site and project specific information to support the evaluation and weighing of the impacts and benefits of the proposed project for many factors, including but not limited to wildlife, endangered species, and water quality.

b. Section 7, Natural Resource Overlay: The project is located in an area which represents high potential value for wildlife and other wetland functions which will subject the permit application to more rigorous review. Therefore, the applicant is requested to provide site specific information to confirm the presence and value of the resources. Should the analysis determine a high resource value, EPA recommends that these values be protected.

c. Section 8, Cumulative Impacts: All predicted future changes in land cover within areas described by the natural resources overlay map may have an adverse effect, particularly on wildlife. For individual permit review, the applicant should provide alternative sites for the project which would avoid cumulative impacts on any particular resource.

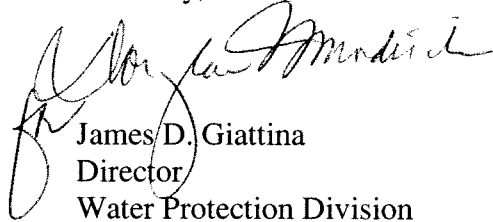
d. Section 24, High Proportion Wetland: The applicant needs to provide an analysis to demonstrate that the proposed project is the least damaging practicable alternative.

Based on the above observations, EPA has determined that the project, as currently proposed, does not comply with the Guidelines. EPA finds this project may have substantial and unacceptable adverse impacts on ARNI. Therefore, we recommend denial of the project, as currently proposed. This letter follows the field level procedures outlined in the August 1992 Memorandum of Agreement between the EPA and the Department of the Army, Part IV, paragraph 3(a) regarding Section 404(q) of the CWA.

Thank you for providing an opportunity for EPA comment on this authorization. We look forward to receiving more information from you. Please copy EPA if the permit and

statement of findings are issued for this project. If you should have any questions, please contact Ron Miedema at 400 North Congress Avenue, Suite 120, West Palm Beach, Florida, 33401 or by telephone at 561-616-8741.

Sincerely,



James D. Giattina
Director
Water Protection Division

cc: FWS, Vero Beach, FL (Paul Souza)
NMFS, St. Petersburg, FL (Mark Sramek)
SWFRPC, Ft. Myers, FL (Jim Beaver)

References:

U.S. Army Corps of Engineers, 2003, "*Final Environmental Impact Statement on Improving the Regulatory Process in Southwest Florida, Lee and Collier Counties*", Jacksonville District, Florida.

U.S. Fish and Wildlife Service, 1999, *South Florida Multi-Species Recovery Plan*, Southeast Region, Atlanta, Georgia.